SOUTHERN DISTRICT OF MISSISSIPPI
FILED
APR 28 2017
ARTHUR JOHNSTON
BY ________ DEPUTY

IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF MISSISSIPPI
SOUTHERN DIVISION

MARVIN J. "BLAKE" BARNES PLAINTIFF

VERSUS CAUSE NO. 1:17cv133 LG-RHW

TIMOTHY L. MURR,
PERRY, MURR, TEEL & KOENENN, P.A.
AND JOHN DOES 1-5 DEFENDANTS

COMPLAINT

COMES NOW, the Plaintiff, MARVIN J. "BLAKE" BARNES, by and through Counsel, SPEIGHTS & WORRICH, LLC, and PURVIS & CO., PLLC, and files his Complaint for damages against the Defendants, TIMOTHY L. MURR, PERRY, MURR, TEEL & KOENENN, P.A., and JOHN DOES 1-5, and would show unto the Court as follows:

NATURE OF THE ACTION

1. Plaintiff MARVIN J. "BLAKE" BARNES brings this action for legal malpractice against the Defendants, TIMOTHY L. MURR, PERRY, MURR, TEEL & KOENENN, P.A. and JOHN DOES 1-5 (collectively "the Defendants"), for certain negligent acts and/or omissions occurring during their representation of the Plaintiff, including but not limited to, the negligent failure to properly advise Plaintiff regarding his request for a pre-nuptial agreement, and the negligent drafting of a deficient pre-nuptial agreement, upon which the Plaintiff requested from the Defendants and detrimentally relied to protect his substantial personal assets in the event of the dissolution of marriage.

THE PARTIES

2. Plaintiff MARVIN J. "BLAKE" BARNES, (hereinafter "Barnes"), is an adult male resident citizen domiciled in Fort Walton Beach, Okaloosa County, Florida.

3. Defendant TIMOTHY L. MURR, (hereinafter "Murr"), upon information and belief, is an adult male resident citizen of Harrison County, Mississippi, and is subject to service of process where he may be found. Defendant Murr is, upon information and belief, a member, director and officer of the Defendant Perry, Murr, Teel & Koenenn, P.A., and was at the time of the allegations contained herein.

4. Defendant, PERRY, MURR, TEEL & KOENENN, P.A., (hereinafter "Law Firm"), upon information and belief, is a Mississippi Corporation registered with the Mississippi Secretary of State and in good standing, authorized to do business and doing business in the State of Mississippi, and is subject to service of process on its registered agent for service of process, Timothy L. Murr, 625 16th Street, Gulfport, Mississippi, 39506.

5. Defendants John Doe 1 through John Doe 5 are unknown to the Plaintiff at the time of the filing of this Complaint despite Plaintiff's best efforts to identify said Defendants. Plaintiff has determined that the John Doe Defendants are those shareholders and/or senior, supervising attorney(s) charged with the responsibility of oversight of Mr. Murr and the Law Firm and who are liable pursuant to the standards and obligations established by the Mississippi Rules of Professional Conduct, which are incorporated herein by reference.

JURISDICTION AND VENUE

6. Jurisdiction exists on the basis of diversity of citizenship, as complete diversity of citizenship between the parties exists as required by 28 U.S.C. §1332. Additionally, the amount in controversy, less interest and costs, exceeds $75,000.00.

7. Venue is proper in this District pursuant to 28 U.S.C. § 1391 because a substantial part of the events giving rise to the allegations occurred in this division and, in the alternative, at least one Defendant is subject to the Court's personal jurisdiction in this division.

FACTS

8. The allegations of the preceding paragraphs are incorporated by reference as if set forth more fully herein.

9. In approximately October 1999, Plaintiff Barnes began an exclusive romantic relationship with his now ex-wife, Cheryl Lynn Burnham Jenkins, (hereinafter "Jenkins").

10. In the course of their relationship, Barnes and Jenkins began discussing the possibility of marriage, with Mr. Barnes specifically conditioning marriage to Jenkins upon her agreement that the parties enter into a prenuptial agreement.

11. Mr. Barnes sought a prenuptial agreement that would completely protect him from all potential claims against his assets in the event of divorce/dissolution of marriage from Ms. Jenkins and further liquidate all monetary matters related to dissolution of the marriage.

12. Mr. Barnes specifically sought to limit the total payment of moneys to Ms. Jenkins to the amount of $50,000.00, inclusive of all categories of awardable damages in a dissolution, and to foreclose any claim by Ms. Jenkins of property division, alimony, attorneys' fees, and any other possible equitable award despite the duration of the marriage. Ms. Jenkins expressly agreed to this condition.

13. In approximately June 2000, after reaching agreement to the terms with Ms. Jenkins, Barnes contacted Mr. Murr and the Law Firm to obtain a referral to an attorney specializing in family law and, more specifically, the creation of a prenuptial agreement that would accomplish his intent.

14. Rather than refer Barnes to a family law attorney capable of drafting a legally valid, contractually-sound and unambiguous prenuptial agreement which would accomplish Mr. Barnes' goals, Murr expressly represented to Barnes that he possessed the requisite legal expertise and was capable of crafting such an agreement that met the standard of care. Murr made these representations to induce Barnes to keep his legal business within the firm.

15. Based upon Murr's representations, Barnes retained Murr and the Defendants to represent him and draft the prenuptial agreement (hereafter "Agreement").

16. In August of 2000, Murr finalized for Barnes' a document titled "Antenuptial" Agreement, and presented it to Barnes for execution by Mr. Barnes and Ms. Jenkins. Mr. Murr did not counsel Barnes on the various provisions of prenuptial agreements and the validity of prenuptial provisions under Mississippi law. Murr represented to Mr. Barnes that the language of the Agreement as drafted was sufficient to protect his assets as requested.

17. On August 21, 2000, Barnes, following the advice of the Defendants, executed the subject "Antenuptial" Agreement; and, on August 28, 2000, Jenkins, following the advice of her independent counsel, also executed the Agreement.

18. At no time before or after the Agreement was executed did the Defendants advise Barnes on Mississippi law governing property division or prenuptial agreements, issues which might result from the potential commingling of assets with a spouse, or the possibility of awards for support, alimony, or attorneys' fees.

19. On September 8, 2000, Barnes and Jenkins were married.

20. Thereafter, Barnes contacted the Defendants to obtain a copy of the executed Agreement, but was told that it could not be found in the Defendants' file.

21. Because the Defendants lost and could not locate the original Agreement, on September 21, 2000, Barnes and Jenkins executed affidavits affirming that they each signed the original Agreement.

22. The marriage between Barnes and Jenkins continued until 2014, when the parties filed for divorce.

23. During the course of the 2014 divorce proceeding, Barnes' divorce attorney reviewed the prenuptial agreement for the first time on May 6, 2014, and advised Barnes that the Agreement did not limit his exposure as the Defendants had assured him it would, and counseled Barnes to

attend mediation to limit his potential exposure from an order in chancery court.

24. On March 6, 2015, counsel for Ms. Jenkins sent a letter to counsel for Mr. Barnes outlining the same deficiencies that counsel for Mr. Barnes had discovered on May 6, 2014.

25. In March of 2015, during mediation, the deficiency of the Agreement was further confirmed by the mediator who determined that the Agreement did not limit Barnes' exposure.

26. Based on the advice of his divorce attorney, combined with the prior identification of the document's deficiency by opposing counsel, and his fear of suffering even greater injury, Barnes agreed to settle with Jenkins for $2,700,000.00, an amount which was $2,650,000.00 beyond the maximum amount the Defendants assured Barnes would owe under the Agreement.

COUNT ONE – LEGAL MALPRACTICE

27. The allegations of the preceding paragraphs are incorporated by reference as if set forth in full herein.

28. The Defendants, in particular, Defendant Murr, represented that they possessed the requisite legal knowledge, skill, thoroughness and preparation reasonably necessary to draft the prenuptial agreement sought by the Plaintiff, and to provide Barnes with essential legal advice in conjunction with the agreement.

29. On that basis, Barnes entered into an attorney-client relationship with Defendant Murr and the Defendants to advise him and draft the Agreement. Barnes paid the Defendants for their retention.

30. Relying upon the Defendant Murr and the other Defendants' represented competence, their advice, and their express assurance that the *Antenuptial Agreement* adequately protected his interests, Barnes executed the Agreement, and, subsequently, wed Jenkins.

31. Despite the Defendants' representations of competency, the advice provided by Defendant Murr and the subsequent *Antenuptial Agreement* produced by Defendant Murr was

deficient as a matter of law. Defendant Murr and/or other attorneys and agents of the Defendant Law Firm did not provide the threshold standard of care in failing to advise and/or adequately advising Mr. Barnes. Defendant Murr and/or other attorneys and agents of the Defendant Law Firm did not provide the threshold standard of care in creating a deficient pre-nuptial agreement upon which Plaintiff relied to his detriment. Defendant Murr and/or other attorneys and agents of the Defendant Law Firm failed to demonstrate the reasonable knowledge, skill, and ability ordinarily possessed and exercised by a similarly situated member of the legal profession. Defendants John Doe 1-5, upon information and belief, had the duty to supervise and manage Defendant Murr and ensure that his work product was sufficient to meet the requisite standard of care. Defendants John Doe 1-5, upon information and belief, breached that duty, directly and proximately causing Plaintiff's damages.

32. As a direct and proximate result of the Defendants' misrepresentations and breach of the standard of care, as well as their breach of fiduciary duty to Plaintiff, the Plaintiff incurred more than $2,650,000.00 in economic damages, non-economic damages for intentional emotional distress, punitive damages, attorneys' fees, expenses, and costs, pre-judgment interest, post-judgment interest, and all other losses directly and proximately caused by the Defendants.

COUNT TWO – GROSS NEGLIGENCE/RECKLESS DISREGARD

33. The allegations of the preceding paragraphs are incorporated by reference as if set forth in full herein.

34. Additionally and alternatively, the representation and work product provided by Defendant Murr and/or other attorneys and agents of the Defendant Law Firm was so grossly inadequate and deficient, and the resulting injury to the Plaintiff was so egregious, as to evince a reckless indifference and disregard to the consequences the Plaintiff might face from Defendants' conduct.

35. The Defendants' gross negligence was the direct and proximate cause of the Plaintiff's $2,650,000.00 in economic damages, non-economic damages for emotional distress, attorneys' fees, expenses, and costs, pre-judgment interest, post-judgment interest, and all other losses directly and proximately caused by the Defendants.

COUNT THREE - MISREPRESENTATION

36. The allegations of the preceding paragraphs are incorporated by reference as if set forth in full herein.

37. Additionally and alternatively, the Defendants misrepresented material facts — specifically, that they were capable of offering sound advice and producing an effective prenuptial agreement — to the Plaintiff; and, the Plaintiff reasonably relied upon the significant misrepresentations of the Defendants. The Defendants knew or should have known the falsity of their assurances to the Plaintiff, and the Plaintiff was justified in relying upon the professional opinions and statements, as complete statements lacking no omissions of material consequence; namely, that the Agreement would accomplish the ends requested and promised. Furthermore, the Defendants omitted facts, advice and counsel, namely regarding the impact of commingling, equitable division of property, alimony, and other matters related to property settlement in dissolution of marriage proceedings. Such omissions caused the plaintiff to suffer direct pecuniary losses and further worked to hide, or otherwise obscure, the shortcomings of the agreement drafted by the Defendants.

38. The conduct and work-product of the Defendants shows that they failed to exercise the degree of diligence and expertise that the Plaintiff was entitled to expect from a reasonably competent, similarly situated legal professional. The work product, and results, demonstrate that it was foreseeable that Plaintiff would suffer harm for both the misrepresentations and omissions made by the Defendants.

39. Therefore, the Defendants are liable for their misrepresentations and omission to the Plaintiff, which caused him to suffer tremendous economic injury as a direct and proximate result of his reasonable reliance on the Defendants' omissions and misrepresentations.

40. The Defendants' negligent misrepresentations were the direct and proximate cause of the Plaintiff's $2,650,000.00 in economic damages, non-economic damages, attorneys' fees, expenses, and costs, pre-judgment interest, post-judgment interest, and all other losses directly and proximately caused by the Defendants.

DAMAGES

41. The allegations of the preceding paragraphs are incorporated by reference as if set forth in full herein.

42. As a result of the Defendants' actions, Plaintiff has sustained pecuniary economic damages in excess of $2,650,000.00, and is entitled to a judgment to recover additional economic and non-economic damages, attorneys' fees, expenses, costs, pre-judgment interest, post-judgment interest, and all other losses directly and proximately caused by the Defendants.

REQUEST FOR JURY TRIAL AND PRAYER FOR RELIEF

WHEREFORE, PREMISES CONSIDERED, Plaintiff, Marvin J. "Blake" Barnes, respectfully demands trial by jury and judgment against the Defendants consistent with the premises alleged herein and as revealed and disclosed in the discovery process for professional negligence, malpractice, wanton and reckless conduct, misrepresentation, omission, breach of contract for professional services, and for damages in an amount to be determined by trial, together with all economic, non-economic, general, special, costs of court, attorney's fees, pre- and post-judgment interest, and any and all other relief that this Court finds the Plaintiff is entitled to in the premises and such other damages as the Court finds appropriate generally.

RESPECTFULLY SUBMITTED THIS 28TH DAY OF APRIL, 2017.

MARVIN J. "BLAKE" BARNES

BY: ______________________________
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